

**PROPOSED AMENDMENTS TO LDRS
TO REVISE NROGO
(SECTIONS 9.5-124 THROUGH 9.5-124.8)**

AMENDMENT #1

Amend Section 9.5-124(b) to create a definition for “buildable lot or parcel” that reads as follows:

Buildable lot or parcel means the lot or parcel must contain a minimum of two thousand (2,000) square feet of uplands, including any disturbed wetlands that can be filled pursuant to this chapter.

AMENDMENT #2

Delete the definition of “Infill Site” in Section 9.5-124(b).¹

AMENDMENT #3

Amend Section 9.5-124.2 as follows:

Sec. 9.5-124.2 Type of development affected and special requirements.

(a) The NROGO shall apply to the development of all new and expanded non-residential floor area and other uses, except as exempted by this division, as described in subsections (b) and (c) below for which a building permit or development approval is required by this chapter and for which building permits have not been issued prior to the effective date of ~~the non-residential permit allocation system~~ this ordinance.²

(b) Notwithstanding the provisions of section 9.5-4(D-8) development, the following new uses shall ~~be prohibited until appropriate areas are so designated in a community master plan;~~ only be eligible for a NROGO allocation under this chapter on sites located within a designated Commercial Center Overlay area.³

- (1) Commercial retail very high-intensity uses that generate more than one hundred fifty (150) vehicle trips per one thousand (1,000) square feet of floor area.
- (2) Storage areas as a principal use not located within a Light Industrial (LI), Industrial (I), or Maritime Industries (MI) district.

¹ The institution of the Tier system eliminates the need for any definition of infill.

² The existing language has been revised for clarification purposes.

³ Existing language is modified for clarification purposes; to reflect the incorporation of Commercial Center Overlay areas; and to provide opportunities for applying certain differing standards for each island community with a Specific Island Overlay. For example, the Big Pine Key and No Name Key master plan prohibits certain uses and intensity of uses, which would be allowed elsewhere in the County.

- (3) Outdoor retail sales areas on a vacant lot and any new or expanded outdoor retail sales associated with a lawfully established structures, existing on the effective date of this division, of less than five hundred (500) square feet of floor area, not located within a Light Industrial (LI), Industrial (I), or Maritime Industries (MI) district.

- (4) Commercial outdoor recreation uses.

(c) New or expanded outdoor retail sales associated with a lawfully established structure, existing on the effective date of this ~~article~~ division, of at least five hundred (500) square feet of floor area may be permitted with a minimum of a minor conditional use approval if located within a designated Tier III area.

(d) Enclosing of any canopies or drive-throughs in existence on or before September 19, 2001, ~~the date of the adoption of NROGO Ordinance No. 032-2001,~~ shall require a NROGO allocation.⁴

(e) The special standards established elsewhere in this chapter for a designated Commercial Center Overlay area or a specific Key(s) Overlay Zone, may supercede, modify, or supplement the standards established for NROGO in this division.⁵

(f) Non-public institutional uses on Big Pine Key and No Name Key are subject to the provisions of NROGO pursuant to the following special conditions and standards:⁶

- (1) A non-public institutional floor area and use, existing on the effective date of the issuance of the Incidental Take Permit for the Florida Key Deer and other covered species, may be expanded by two-thousand five hundred (2,500) square feet of floor area per NROGO year. These allocations are to be made on a “first come, first served” basis.

- (2) New non-public institutional uses on Big Pine Key and No Name Key are subject to the provisions of NROGO .

(g) All new or expanded non-residential development on Big Pine Key and No Name Key is subject to the provisions of the Incidental Take Permit and the Habitat Conservation Plan for the Florida Key Deer and other covered species, which may affect NROGO allocations under this chapter. All new and expanded non-residential

⁴ The specific ordinance that establishes the date does not have to be identified in the text.

⁵ This provision allows each Commercial Center Overlay area to incorporate special standards as needed to fit the differing needs of each Keys community.

⁶ These provisions reflect the adopted community master plan for Big Pine Key and No Name Key and the HCP.

development shall be limited to scarified or disturbed lands and clearing of any pinelands and/or hammock is prohibited.⁷

AMENDMENT #4

Amend Section 9.5-124.3 (a)(4) as follows:⁸

- (4) *Development activity for certain not-for-profit organizations: Except for the non-public institutional uses on Big Pine Key and No Name Key pursuant to section 9.5-124.2, Non-residential development activity within Tier II and III designated areas by federally tax exempt not-for-profit educational, scientific, religious, social, cultural and recreational organizations, which predominately serve the county's permanent population, if approved by the planning commission after review and recommendation by the planning director. This exemption is subject to the condition that a restrictive covenant be placed on the property prior to the issuance of a building permit. The restrictive covenant shall run in favor of Monroe County for a period of at least twenty (20) years. Any change in the use or ownership of the property subject to this restrictive covenant shall require prior approval by the planning commission, unless the total floor area exempted by the planning commission is obtained through an off-site transfer of floor area and/or non-residential floor area allocation pursuant to this chapter. If the total amount of floor area that is transferred and/or allocated meets or exceeds the total amount of floor area exempted, the restrictive covenant shall be vacated by the County. This not-for-profit exemption is not applicable to non-residential development proposed within ~~those areas proposed for acquisition by governmental agencies for the purpose of resource protection~~ a Tier I designated area.*⁹

AMENDMENT #5

Amend Section 9.5-124 .3 (a)(10) b. as follows:¹⁰

- i. ~~Has existing lawfully established non-residential floor area or is an infill site~~ located within a Tier III designated area, and if on Big Pine Key, is located within the designated Community Center Overlay area; and,

⁷ This language is necessary to provide basis for making unforeseen adjustments in the NROGO allocations for Big Pine Key and No Name Key that may be necessitated by the restrictions contained in the "H" budget of the HCP and Incidental Take Permit.

⁸ This proposed language will help ensure that the floor area granted under the exemption provisions of these regulations will be restricted to entities and uses that meet the criteria for such an exemption even upon transfer of ownership.

⁹ This language reflects incorporation of Tier system.

¹⁰ The institution of the Tier system requires these revisions to existing criteria as the Tier system eliminates the need for addressing negative points for habitat and off-shore islands.

- ii. Is located within the same ROGO subarea as the sender site, except that for a receiver site on Big Pine Key, the sender site shall also be located on Big Pine or No Name Keys; and,
- iii. Is not a commercial very high intensity retail use which will generate more than one hundred fifty (150) vehicle trips per one thousand (1,000) square feet of floor area; and,
- ~~iv. Is not located on Big Pine Key, No Name Key or within a CARL acquisition area~~
- ~~v. Receives no negative environmental points when evaluated pursuant to subsections 9.5-124.8(a)(4) - (6); and~~
- ~~vi.iv. Is not located within a "V" special flood hazard zone pursuant to subsection 9.5-124.8(a)(8); and~~
- ~~vii. Is not located in a coastal barrier resources system pursuant to subsection 9.5-124.8(a)(9); and~~
- ~~viii. Is not located in an offshore island/conservation land protection area pursuant to subsection 9.5-124.8(a)(10).~~

AMENDMENT #6

Amend Section 124.4(a) and (b) as follows:¹¹

(a) *Maximum amount of available floor area for the annual non-residential ROGO allocations:* The maximum amount of floor area available for allocation under NROGO shall be determined by multiplying the number of residential permits available for the annual residential allocation period year by two hundred thirty-nine (239) square feet and rounding the product to the nearest one hundred (100) square feet. The maximum amount of available floor for annual allocations shall be computed separately for Big Pine Key and No Name Key and for the remainder of unincorporated Monroe County. This maximum total may be adjusted as provided for in ~~subsection 9.5-124.6(a).~~ Except for Big Pine Key and No Name Key, For the first annual allocation period, the maximum amount of floor area that may be made available for allocation is to be based upon the number of permits issued under ROGO, starting with the Third Quarter, ROGO Year 1 (starting April 14, 1993) through ROGO Year 9 (ending July 13, 2001) and number of ROGO allocations to be made in ROGO Year 10, reduced by the amount of non-residential floor area approved in permits, issued after the adoption of the comprehensive plan on April 15, 1993. Any remaining part of the maximum annual allocation not made available for allocation in an annual allocation period by the board of

¹¹ This amendment and the following two amendments are required to implement the Habitat Conservation Plan and Community Master Plan for Big Pine Key and No Name Key.

county commissioners in subsection 9.5-124.4(g) shall be carried over to the next annual allocation period.

(b) *Maximum allocation of non-residential floor area by site:* The amount of non-residential floor area to be allocated shall be limited to a maximum of two thousand five hundred (2,500) square feet for any one site, except for sites ~~designated for non-residential development in a community master plan~~ located within a designated Community Center Overlay area. For sites located within a ~~community master plan~~ Community Center Overlay area, the maximum allocation shall only be limited by the maximum floor area per structure in subsection (c) below.

AMENDMENT #7

Amend Section 9.5-124.4 by creating new Section 124.4 (i) and (j) that read as follows:

(i) *First Allocations for Big Pine Key and No Name Key:* For the first allocation period, the maximum amount of floor area available for allocation shall be based on the number of permits issued under the 200 allocations authorized by the Big Pine Key and No Name Key Community Master Plan and the number of ROGO allocations to be made available in the ROGO Year 13 beginning July 17, 2004.

(j) *Separate Allocations for Big Pine Key and No Name Key:* Allocations for Big Pine Key and No Name Key shall be administered and awarded separately from those for the remainder of unincorporated Monroe County.

AMENDMENT #8

Amend Section 9.5-124.6 (b)(1) as follows:

- (1) Within thirty (30) days of an allocation date, unless otherwise extended by the planning commission, the planning director shall:
 - a. Complete the evaluation of all allocation applications submitted during the relevant allocation period; and
 - b. Total the amount of square footage for which allocation applications have been received for Big Pine Key and No Name Key and for the remainder of unincorporated Monroe County; and
 - c. Rank the floor area allocation applications, in descending order from the highest evaluation point total to the lowest for each size classification for Big Pine and No Name Key and the remainder of unincorporated Monroe County.

AMENDMENT #9

Amend Section 9.5-124.7(a) and (b) as follows:¹²

(a) *Eligibility:* An applicant is eligible for administrative relief under the provisions of this section if all the following criteria are met:

- (1) The applicant has complied with all requirements of the non-residential permit system allocation system.
- (2) The subject application has not been withdrawn; and,
- (3) The subject application has been considered in at least three (3) of the first four consecutive allocation periods and has failed to receive an allocation award.

(b) *Application:* An application for administrative relief shall be made on a form prescribed by the director of planning and may be filed with the planning department no earlier than the conclusion of the ~~third~~ fourth allocation period and no later than one hundred twenty (120) days following the close of the fourth annual allocation period.

AMENDMENT #10

Amend Section 9.5-124.8 to read as follows:

(a) *Evaluation point values:* The following point values established are to be applied cumulatively except where otherwise specified:

- (1) *Tier designation:* The following points are intended to discourage non-residential development in environmentally sensitive areas and areas within sufficient infrastructure and to direct and encourage non-residential development in appropriate infill areas, while recognizing that any development has affects on the carrying capacity of the Florida Keys:¹³

<i>Point assignment:</i>	<i>Criteria:</i>
0	An application which proposes non-residential development within an area designated Tier I [Natural Area].

¹² This language eliminates administrative problems with applications filed prior to completion of fourth allocation period, removes ambiguity in eligibility language and makes it similar to the language for ROGO, and extends period for filing application.

¹³ The points for infill have been revised to incorporate the Tier system. As proposed, this system strongly rewards projects within Tier III with somewhat less favorable scoring for projects in Tier II.

+10	An application which proposes non-residential development within an area designated Tier II [Transition and Sprawl Reduction Area].
+20	An application which proposes non-residential development within an area designated Tier III [Infill Area].

- (2) *Intensity reduction:* The following points are intended to encourage the voluntary reduction of intensity:¹⁴

<i>Point assignment:</i>	<i>Criteria:</i>
+ 4	An application proposes development that reduces the permitted floor area ratio (FAR) to twenty three percent (23%) or less.
	<i>Additional requirement:</i>
	A legally binding restrictive covenant running in favor of Monroe County that restricts the floor area ratio of the property to a maximum of twenty three percent (23%) for a period of ten (10) years shall be approved by the growth management director and county attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.

- (3) *Land dedication:* The following points are intended to encourage the voluntary dedication of vacant, buildable land within those areas proposed for acquisition by governmental agencies for the purposes of conservation, resources protection, restoration or density reduction, and if located within Tier II or Tier III, for the purpose of providing land for affordable housing where appropriate:¹⁵

¹⁴ No change has been made, except the wording for the restrictive covenant requirements.

¹⁵ The points proposed for land dedication are same as proposed under ROGO.

<i>Point assignment:</i>	<i>Criteria:</i>
+4	An application which includes the dedication to Monroe County of one (1) vacant, legally platted, buildable lot, zoned IS, IS-D, IS-M, URM, URM-L, or CFV. Each additional vacant, legally platted, buildable lot which is dedicated that meets the above requirements will earn the application the additional points as specified.
+1 per 5,000 square feet of lot area	An application which includes the dedication to Monroe County of a vacant, legally platted, buildable lot of five thousand (5,000) square feet or more within a Suburban Residential District (SR) or Suburban Residential – Limited District (SR-L) in a designated Tier I area. Each additional vacant, legally platted, buildable lot of five thousand (5,000) square feet or more that meets the above requirements will earn points as specified.
+0.5	An application which includes the dedication to Monroe County of one (1) vacant, legally platted lot of five thousand (5,000) square feet or more within a Native Area District (NA) or Sparsely Settled District (SS) within a designated Tier I area. Each additional vacant, legally platted, buildable lot that meets the above requirements will earn the half (0.5) point as specified.
+4	An application which includes dedication to Monroe County of at least one (1) acre of vacant, unplatted, buildable land located within a designated Tier I area. Each additional one (1) acre of vacant, unplatted, buildable land that meets the above requirements will earn the points as specified.
	<i>Additional requirements</i>
	<p>The application shall include but not be limited to the following:</p> <p>* An affidavit of ownership of all affected lots, parcels, acreage or</p>

	<p>land; and</p> <p>* A statutory warranty deed, that conveys the dedicated property to the county shall be approved by the growth management director and county attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.</p>
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(4) *Special flood hazard area:* The following points are intended to discourage development within high risk special flood hazard zones:¹⁶

<i>Point assignment:</i>	<i>Criteria:</i>
- 4	An application which proposed development within a "V" zone on the FEMA Flood Insurance Rate Map.

(5) *Perseverance points:* The following points are intended to reward an application based upon the number of years spent in the non-residential ROGO system without receiving an allocation award.

<i>Point assignment:</i>	<i>Criteria:</i>
+1	A point shall be awarded on the anniversary of the controlling date for each year that the application remains in the NROGO system up to four years.
+2	Points shall be awarded on the anniversary of the controlling date for each year over four (4) that the application remains in the NROGO system.

(6) *Highway access:* The following points are intended to encourage connections between commercial uses and reduction of the need for trips and access onto U.S. Highway 1:¹⁷

¹⁶ Negative points for special flood hazards have been revised similar to those for ROGO.

¹⁷ The existing points have been revised as existing point system has not accomplished the purpose of reducing access to U.S. Highway 1 which creates traffic congestion and safety problems.

<i>Point assignment:</i>	<i>Criteria:</i>
+3	The project eliminates an existing driveway or access-way to U.S. Highway 1.
+2	The projects does not provide for a new driveway or access-way to U.S. Highway 1.

(7) *Landscaping and water conservation:* The following points are intended to encourage the planting of native vegetation and promote water conservation:

<i>Point assignment:</i>	<i>Criteria:</i>
+3	The project provides a total of two hundred (200) percent of the number of native landscape plants on its property than the number of native landscape plants required by this chapter within landscaped bufferyards and parking areas.
+1	Twenty-five percent (25%) of the native plants provided to achieve the three (3) point award above or provided to meet the landscaped bufferyard and parking area requirements of this chapter are listed as threatened or endangered plants native to the Florida Keys.
+2	Project landscaping is designed for water conservation such as use of one hundred percent (100%) native plants for vegetation, collection and direction of rainfall to landscaped areas, or application of re-used wastewater or treated seawater for watering landscaped plants.
	<i>Additional requirements:</i>
	Prior to the issuance of a certificate of occupancy for the building permit authorized by an allocation award, the applicant shall: ¹⁸ * Post a two-year performance bond in

¹⁸ This revision reflects the need to post the performance bond after construction and prior to occupancy rather than at the time of the issuance of the building permit. This change reflects the fact that landscaping is generally one of the last improvements made and it makes little sense to post a bond when it may be three to six months before landscaping is even started.

	<p>accordance with this chapter to ensure maintenance of the native plants; and,</p> <p>* Shall sign an affidavit acknowledging that he is subject to code enforcement action should the native plants not be maintained.</p>
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(8) *Central wastewater treatment system availability:* The following points shall be assigned to encourage development in areas served by central wastewater treatment systems:¹⁹

<i>Point Assignment:</i>	<i>Criteria:</i>
+ 4	An application which development required to be connected to a central wastewater treatment system that meets BAT/AWT standards established by the Florida Legislature.

(9) *Employee housing:* The following points, up to a maximum of four (4) shall be assigned to allocation applications that make provisions for employee housing units:²⁰

<i>Point Assignment:</i>	<i>Criteria:</i>
+ 2 per unit	Proposes an employee housing unit(s) which is located on the parcel with the nonresidential floor space requested in the allocation application.
	<i>Additional Requirements:</i>
	<ol style="list-style-type: none"> 1. The employee housing unit shall be required to meet the applicable provisions of section 9.5-266. 2. The proposed employee housing unit(s) shall be included in the development approval for the nonresidential development proposed in the allocation application.

¹⁹ This language is intended to encourage infill development in areas served by central sewer systems being upgraded or constructed to meet 2010 Wastewater Treatment Standards mandate; maximize public investment; reduce the average EDU operating/maintenance costs of these systems; and, help recoup capital costs.

²⁰ This new provision provides further incentives for provision of employee housing in coordination with new nonresidential development.

	<p>3. A certificate of occupancy shall be granted for the nonresidential development authorized by the allocation award shall not be issued prior to the certificate of occupancy for the employee housing units.</p>
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